

Appl. No. 09/696,749  
Amd. Dated October 8, 2003  
Reply to Office Action of April 22, 2003

### REMARKS/ARGUMENTS

Claims 1-28 are pending and stand rejected. Claims 29-57 were withdrawn for being non-elected claims, and are being cancelled in this response. Claims 10-12 were amended to correct grammatical errors.

#### I. Cancellation of previously withdrawn claims

Applicants are canceling claims 29-57, which were previously withdrawn for being non-elected claims.

#### II. Rejections Under 35 U.S.C. § 112

Applicants gratefully acknowledge the Examiner's withdrawal of the §112 rejections presented in the previous Office Action.

#### III. Rejections Under 35 U.S.C. § 102

Claims 1-9 and 16-24 stand rejected under §102(e) as allegedly being anticipated by US Patent No. 6,375,817 ("Taylor"). To overcome the rejections based on Taylor, Applicant is submitting a declaration under 37 CFR 1.131. Applicant asserts that use of the declaration is proper because Taylor is a §102(e) reference that has a prior art date under §102(e) prior to Applicant's effective filing date, and allegedly shows but does not claim the same patentable invention. See MPEP 715. The dates on the evidence accompanying the declaration have been blocked out as is allowed under MPEP 715.07. Since the declaration and its accompanying evidence demonstrate both conception and reduction to practice before the prior art date under §102(e) of Taylor, no showing of due diligence is required. MPEP 715.07. Since the declaration under 37 CFR 1.131 removes the basis for the §102(e) rejections of claims 1-9 and 16-24, and there was no other basis for rejection of those claims, Applicant asserts that those claims are in condition for allowance.

Claims 25-28 stand rejected under §102(e) as allegedly being anticipated by US Patent No. 6,471,841 ("Nikiforov"). Applicant respectfully traverses this rejection. For a reference to anticipate a claim under §102(e), the reference must disclose every element of the claim. MPEP 2131. All of claims 25-28 are ultimately dependent from claim 1, so they include all of the limitations of claim 1. Since the Examiner has not asserted that Nikiforov anticipates claim 1, Applicant asserts that Nikiforov cannot anticipate claims dependent from claim 1. Therefore, Applicant asserts that claims 25-28 are in condition for allowance.

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IV. Rejections Under 35 U.S.C. § 103

Claims 10-15 stand rejected under §103(a) as allegedly being unpatentable over the combination of Taylor and US Patent No. 6,368,871 ("Christel"). Since Applicant has sworn behind Taylor, Taylor is not prior art that can serve as the basis of a §103(a) rejection.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (650) 623-0737.

Respectfully submitted,



Donald R. McKenna  
Reg. No. 44,922

CALIPER TECHNOLOGIES CORP.  
605 Fairchild Drive  
Mountain View, CA 94043  
Tel: 650-623-0737  
Fax: 650-623-0504